

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Houston, Texas

LETSOS COMPANY

Employer

and

Case No. 16-RC-10513

SHEET METAL WORKERS LOCAL UNION NO. 54,
a/w SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Petitioner, Sheet Metal Workers Local Union No. 54, a/w Sheet Metal Workers International Association, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all of the Employer's sheet metal workers. At the time of the petition, 16 employees were performing sheet metal work. The parties agreed that the unit included 14 of the 16 employees who are classified as sheet metal journeymen, apprentices/mechanics, and helpers/pre-apprentices.

The issue before me is whether employees Felix Morales and Randy Stout, who perform some sheet metal work as well as other duties for the Employer, should be included in the appropriate unit. Petitioner seeks a traditional craft unit of only sheet metal workers and asserts that Morales and Stout should be excluded from the unit. To the contrary, the Employer contends that the only appropriate unit should include Morales and Stout based on their shared community of interest. A hearing officer of the Board held a hearing and the parties filed briefs with me.

Based on the record evidence as a whole, I conclude that a sheet metal workers craft unit, excluding all other employees, including plumbers, pipefitters, truck drivers, estimators, office clerical employees, professionals, guards and supervisors as defined in the Act, is appropriate. I further conclude that Felix Morales is included in the unit and that Randy Stout shall vote by challenge ballot.

STATEMENT OF FACTS

The Employer, Letsos Company, a Texas corporation, with an office and place of business in Houston, Texas, is engaged in the construction industry,¹ specifically in the installation of commercial, industrial and institutional HVAC systems and in the service and maintenance of air conditioning chiller equipment and plumbing equipment.

James Letsos, III, is the President, Chief Executive Officer and part owner of the company. The business operation consists mainly of three departments: Service Department, headed by Greg Letsos, Executive Vice President; Construction Department, headed by Stan Whitfill, Vice President of Construction; and Special Projects, the name of the department head which the record did not disclose. The department heads, the estimating manager, and the pre-construction manager report to James Letsos. Jim Olsen, Operations Manager, and Cliff Alford, Service Sales Manager, report to Greg Letsos. The general superintendents of plumbing, piping, and sheet metal report to Whitfill. Refugio Reyes is the general superintendent for the sheet metal workers. The record did not disclose the general superintendents for plumbing or piping. The parties stipulated, and I find, that James Letsos, Stan Whitfill, and Refugio Reyes are supervisors within the meaning of Section 2(11) of the Act because they have the authority to hire, fire, discipline, or effectively recommend such action and, therefore, are excluded from the appropriate unit.

The Employer, in part, provides sheet metal work services. It does not fabricate the sheet metal on site but installs the ductwork. The sheet metal workers put up hangers, seal ducts, read blue prints, lay out hangers, and are familiar with some codes. Sheet metal workers are classified as journeymen, apprentice/mechanics, and helper/pre-apprentices. These employees typically go through an apprenticeship program, which involves classroom work and on-the-job training. They use tools of the trade such as green snips, red snips, bulldogs, hammers, and screwdrivers. They may work individually or on a crew, which consists of a journeyman with an apprentice, and helper/pre-apprentice. The journeyman is considered the skilled employee, the apprentice is participating in the apprenticeship program, and the helper/pre-apprentice is akin to a laborer who assists the journeymen or apprentices with their duties. The sheet metal workers primarily work in the Construction and Service Departments but may assist in other departments.

Four working leadmen report to Reyes in the Construction Department. The working leadmen work directly with the sheet metal workers. The sheet metal workers may also work in the Service Department. This department consists of industrial, plumbing, and HVAC areas. The second tier supervisors are Operations Manager Olsen and Service Sales Manager Alford. Alford supervises 30 salesmen. Olsen supervises the dispatchers, clerical, IT, and service technicians. The service technicians are the plumbers, pipefitters, and sheet metal workers. Each of the different, skilled crafts may work in any division/department within the Employer, primarily performing tasks according to their

¹ The parties stipulated, and I find, that the **Daniel/Steiny** formula shall apply in determining voter eligibility.

craft. When sheet metal workers perform work in the Service Department, their immediate supervisor is a project manager.

Evidence adduced at the hearing established that the Employer has collective bargaining agreements that cover the pipefitters, approximately 80 to 90 employees, and the plumbers, approximately 12 to 14 employees. Employees within the same classifications, such as sheet metal work, pipefitting, and plumbing, receive the same or similar benefits. However, the benefits differ between the crafts. All sheet metal workers are paid between \$14 and \$16 per hour and receive the same holiday pay, medical insurance, vacation, and 401(k) pension plan.

The record revealed that employee Felix Morales has worked for the Employer approximately five years. Initially, he was employed as a laborer in the warehouse area. Currently, he is classified as a sheet metal worker. The Employer views him as an advanced helper. James Letsos testified that in a typical year Morales spends 80% to 90% of his time performing sheet metal work. Morales has performed sheet metal work in Galveston and at the Metro Parking Garage by installing fire dampers and louvers. When work is slow in the sheet metal work area, Morales works in the warehouse, running errands and making deliveries. Within the past 12 months, during slow periods, Morales has performed sheet metal work at least 60% of the time. Morales receives the same wages and fringe benefits as other sheet metal workers.

The record disclosed that employee Randy Stout is a licensed master plumber by trade and has become skilled at sheet metal work through his work experience.² Stout was formerly the general superintendent for the sheet metal workers. About three months ago, Reyes was hired to perform these functions. After relinquishing the general superintendent position, Stout's salary remained the same. Although the record does not reflect Stout's exact pay rate, Reyes is currently being paid \$24.00 an hour. Stout's other benefits – vacation, holiday pay, medical insurance, and 401(k) – are the same as other sheet metal workers. Currently, Stout is performing punch list items and sheet metal work. The punch list items consist of sheet metal work, air conditioning, and plumbing work. The record did not disclose the frequency that Stout is performing these duties. When performing punch list items, he reports to Bob May, a project manager, and works with pipefitters. When Stout is in the field, a project manager supervises him. When Stout is in the Construction Department, Reyes supervises him. On an "as required" basis, Stout works in the Construction Department in two capacities. He advises Reyes regarding work production and expectations, explains the expectations to the sheet metal workers, and shows sheet metal workers how to perform new concepts. The record does not disclose how often Stout is in the field showing employees the new concepts. When he is working in the Construction Department, Stout works directly with the other sheet metal workers performing sheet metal work. Reyes calls Stout when he is shorthanded. The record does not disclose the time and duration that Stout spends in the Construction Department overall but revealed that 35% to 40% of his time in the department is spent performing sheet metal work.

² The parties stipulated, and I find, that Stout is not covered by the plumber or pipefitter collective bargaining agreements. Stout was formerly the general superintendent for the sheet metal workers.

ANALYSIS

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act. " **NLRB v. Action Automotive, Inc.**, 469 U.S. 490, 494-97 (1985). See **Morand Brothers Beverage Co.**, 91 NLRB 409, 418 (1950). The Board's discretion extends to selecting an appropriate unit from the range of units, which may be appropriate in any given factual setting; it need not choose the most appropriate unit. **American Hospital Association v. NLRB**, 499 U.S. 606, 610 (1991); **P.J. Dick Contracting, Inc.**, 290 NLRB 150, 151 (1988).

The Board has defined a craft unit as a "distinct and homogeneous" unit of journeymen, apprentices, and helpers who are primarily engaged in tasks not performed by others that require substantial craft skills and the use of specialized tools and equipment. The factors the Board considers are formal training or apprenticeship programs, functional integration, overlap of duties, whether work assignments are based on need or made along craft lines, and common interests in wages and other terms and conditions of employment. Although some employees may perform unskilled work in other trades, the overlapping of duties in the lesser-skilled aspects of a trade does not preclude a craft unit. **Schaus Roofing and Mechanical Contractors, Inc.**, 323 NLRB 781 (1997). See **Burns & Roe Services Corp.**, 313 NLRB 1307, 1308-09 (1994). The parties stipulated, and I find, that a sheet metal worker craft unit is appropriate in this unit.

In determining whether the employees in the petitioned-for unit share a sufficient community of interest, the following factors are considered: bargaining history, functional integration of operations; the similarity of skills, duties, and working conditions of employees; centralization of control of labor relations and supervision, particularly in regard to hiring, discipline, and control of day-to-day operations; and interchange of employees among construction sites. **Dezcon, Inc.**, 295 NLRB 109, 111 (1989). The parties stipulated, and I find, that the 14 identified sheet metal workers are appropriately included in the unit based on these community of interest factors. In dispute at the time of the hearing, was whether two employees who perform sheet metal work as well as other duties for the Employer should be included in the appropriate unit.

At the hearing, the Union argued that employee Felix Morales should be excluded from the unit. The Union now agrees in its brief that Morales should be included in the unit if he performs sheet metal work 70% to 80% of the time. The record established that although the Employer considers Morales to be an "advanced helper," 80% to 90% of the time Morales works as a sheet metal worker and uses the specialized tools of the trade. Morales is paid the same wages, shares the same fringe benefits, and is subject to the same supervision and working conditions as other sheet metal workers. He regularly and routinely performs sheet metal work. During slow periods for the sheet metal workers, Morales performs duties in the warehouse. However, even during the slow periods Morales spends at least 60% of his time performing sheet metal work. The evidence also revealed that Morales' sheet metal work takes priority over the other miscellaneous duties.

Therefore, I find that although Morales performs limited, unskilled work in the warehouse, a majority of his time is spent performing sheet metal functions. I conclude that Morales shares a substantial community of interest with the petitioned-for employees such that he should be included in the bargaining unit.

The record contained general testimony that employee Randy Stout performs sheet metal functions as well as completing punch list items. The record, however, is devoid of evidence that would establish the frequency and duration that Stout spends in the performance of these duties, specifically sheet metal work. The Employer and Petitioner agree that Stout performs no supervisory work and that he has the same benefits as the other sheet metal workers but retained his superintendent pay, which is substantially more than the highest paid sheet metal worker. As the record is unclear as to all of Stout's duties, there is insufficient evidence to establish whether Stout, in performing unit work and non-unit work, shares a substantial community of interest with the other sheet metal workers included in the unit. Therefore, I conclude that Stout shall vote subject to challenge.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, Letsos Company, a Texas corporation, with a place of business in Houston, Texas is engaged in the construction industry, specifically installing commercial, industrial and institutional HVAC systems and in the service and maintenance of air conditioning chiller equipment and plumbing equipment. During the past twelve months, a representative period, the Employer purchased and received at its Houston, Texas facility, goods valued in excess of \$50,000 directly from points located outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All sheet metal workers employed by the Employer.

EXCLUDED: All other employees, including plumbers, pipefitters, truck drivers, estimators, office clerical employees, professionals, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Sheet Metal Workers Local Union No. 54, a/w Sheet Metal Workers International Association, AFL-CIO.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

All employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and who have been employed 45 or more working days within the period of 24 months, immediately preceding the eligibility date shall be eligible to vote. **Daniel Construction Co.**, 133 NLRB 264 (1961), modified 167 NLRB 1078 (1967), reaff'd and modified in **Steiny & Co.**, 308 NLRB 1323 (1992).

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters

and their addresses, which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. **North Macon Health Care Facility**, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Houston Resident Office, Mickey Leland Federal Building, Suite 1545, 1919 Smith Street, Houston, TX 77002, on or before **July 23, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (713) 209-4890. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Resident Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. **Club Demonstration Services**, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **July 30, 2003**. The request may **not** be filed by facsimile.

Dated: **July 16, 2003**

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102

Classification Index

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